

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	09-00359-01-CR-W-FJG
RICHARD ALLAN HERRING,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On February 5, 2010, the Court held a competency hearing Herring pursuant to 18 U.S.C. § 4241. On February 10, 2010, the Court entered its Report and Recommendation recommending that the District Court find that defendant Herring was incompetent to properly assist in his defense, and commit defendant Herring to the custody of the Attorney General for hospitalization and treatment in a suitable facility for a reasonable time to determine whether there was a substantial probability that the defendant would attain the capacity to permit the trial to proceed. On March 31, 2010, the Honorable Fernando J. Gaitan, Jr. adopted the Report and Recommendation.

Defendant Herring was transported to the Federal Medical Facility in Butner, North Carolina, for treatment. The Court has now received the psychological or psychiatric report of Desiree A. Griffin, M.A., Dr. Angela Walden Weaver and Dr. Robert G. Lucking which concluded that the defendant is competent to understand the nature and consequence of the proceedings against him and to assist properly in his defense. This report has been provided to and reviewed by counsel for the government and counsel for the defendant. On May 27, 2011, a

hearing was held pursuant to 18 U.S.C. § 4247(d) for the purpose of determining the mental competency of the defendant to stand trial. At this hearing, counsel for the government and counsel for the defendant stipulated that the Court could consider the psychological or psychiatric report of Ms. Desiree A. Griffin, M.A., Dr. Angela Walden Weaver and Dr. Robert G. Lucking as if Ms. Griffin, Dr. Angela Walden Weaver and Dr. Robert G. Lucking had appeared in person and testified under oath. No additional evidence was offered by the government or by the defendant.

Based on the record before the Court and the findings of Ms. Desiree A. Griffin, M.A., Dr. Angela Walden Weaver and Dr. Robert G. Lucking, it is

RECOMMENDED that the District Court, after conducting its own independent review of the record, find that defendant is competent to understand the nature and consequence of the proceedings against him and to assist properly in his defense.

Counsel are reminded that each has 14 days from the date of receipt of a copy of this Report and Recommendation to file and serve specific objections to the same. A failure to file and serve timely objections shall bar attack on appeal of the factual findings in this Report which are accepted or adopted by the District Judge except upon the ground of plain error or manifest injustice.

/s/ JOHN T. MAUGHMER

JOHN T. MAUGHMER
United States Magistrate Judge

Kansas City, Missouri